

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GEORGE JOSEPH,
Plaintiff

v.

DR. M. NAJI, et al.,
Defendants

:
:
:
:
:
:
:

No. 1:16-cv-01870

(Judge Kane)
(Chief Magistrate Judge Schwab)

ORDER

Before the Court is the May 16, 2017 Report and Recommendation of Magistrate Judge Schwab. (Doc. No. 43.) No timely objections have been filed.¹ Accordingly, on this 31st day of May 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation of Magistrate Judge Schwab (Doc. No. 43);
2. The Commonwealth Defendants' motion to dismiss (Doc. No. 15), is **GRANTED IN PART** and **DENIED IN PART**, as follows:
 - a. Defendants' motion to dismiss Plaintiff's Eighth Amendment claim against Defendant Varner is **GRANTED**;
 - b. Defendants' motion to dismiss Plaintiff's Eighth Amendment claim against Defendants Pearson, Noel, and Ginchereau is **DENIED**;
 - c. Defendants' motion to dismiss Plaintiff's conspiracy claim against the Commonwealth Defendants is **GRANTED**;
3. Plaintiff's Eighth Amendment claim against Defendant Varner is **DISMISSED WITH PREJUDICE**;
4. Plaintiff's conspiracy claim against the Commonwealth Defendants is **DISMISSED WITHOUT PREJUDICE**;

¹ The Court notes that, following the issuance of Magistrate Judge Schwab's Report and Recommendation, Plaintiff filed a handwritten letter dated May 21, 2017, informing the Court of his intent to file an amended complaint and requesting clarification as to when the amended complaint must be filed. (Doc. No. 44.)

5. Plaintiff is directed to file an amended complaint within **thirty (30) days** from the date of this Order that corrects the pleading deficiencies identified in the Report and Recommendation;² and
6. The above-captioned action is recommitted to Magistrate Judge Schwab for further pretrial management.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

² As explained by Magistrate Judge Schwab in her Report and Recommendation, the amended complaint must be titled as an amended complaint and must contain the docket number of this case. The amended complaint must be complete in all respects; it must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed. This means that Plaintiff must reassert his claims against Defendants Naji and Thornley, his Eighth Amendment claim against Defendants Pearson, Noel, and Ginchereau, his conspiracy claim, and any pendent state law claims in the new pleading, as the amended complaint will completely replace the original complaint. If an amended complaint is filed, the original complaint will have no role in the future litigation of this case. Any amended complaint must also comply with the pleading requirements of the Federal Rules of Civil Procedure. (Doc. No. 43.)